

1 court's view. If plaintiff can marshal his evidence, he should be able to raise a serious question as to the
2 merits of his claims and the treatment he alleges represents a severe hardship for him with only sadistic
3 gratification to the defendants, which public interest and a civil society strongly disfavors.

4 However, allegations are insufficient to win an injunction - evidence must be presented to
5 support the allegations. *Ashcroft v. ACLU*, 542 U.S. 656, 666, 124 S.Ct. 2783 (2004); *Thalheimer v. City*
6 *of San Diego*, 645 F.3d 1109, 1116 (9th Cir. 2011) ("the burden of proof at the preliminary injunction
7 phase track the burden fo proof at trial"). That rule applies to both parties. If the plaintiff presents so
8 much as a sworn declaration as to the facts alleged, he will prevail as the matter stands, because
9 defendants have also presented no evidence to support their defenses.

10 Thus, as the briefing stands, the court is faced with a situation where neither or both parties may
11 be telling the truth, but neither party has made their assertions under oath or with the support of
12 independent evidence.

13 Rather than schedule a hearing on the motion where such evidence as may exist could be taken
14 in open court, in an effort to preserve the resources of the court and the parties, the court will direct each
15 party to submit additional briefing which must include any admissible evidence as may exist to support
16 their respective positions.

17 **IT IS THEREFORE ORDERED** that within twenty days of entry of this order the parties shall
18 file simultaneous supplemental briefs in support of their allegations or defenses as raised in the amended
19 complaint and motion for preliminary injunction and in defendants' opposition. The supplemental
20 briefing shall include such admissible evidence as may be available to support the party's position,
21 including any sworn declarations of witnesses. **Failure to provide such admissible evidence will**
22 **result in an adverse ruling.**

23 DATED: May 20, 2013.

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26 UNITED STATES DISTRICT JUDGE